

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

SEP 10 2013

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

JAMES W. McCORMACK, CLERK
By: *John Rosemary*
DEP CLERK

DONNA FOWLER

PLAINTIFF

vs. No. 3:13-cv-00205 BRW/JTR

JOHN COX, AND
FLYWAY EXPRESS, LLC

DEFENDANTS

COMPLAINT This case assigned to District Judge Wilson
and to Magistrate Judge Bry

COMES NOW, the Plaintiff, Donna Fowler, and for her Complaint against the Defendants, John Cox and Flyway Express, LLC, states:

1. At the time of the occurrence, the Plaintiff, Donna Fowler, was a resident of Poinsett Harrisburg, Poinsett County, Arkansas, and therefore a citizen of the state of Arkansas.
2. At the time of the occurrence, the Defendant, John Cox, was a resident of Memphis, Tennessee, and therefore a citizen of the state of Tennessee.
3. At the time of the occurrence described herein, the Defendant, Flyway Express, LLC, was a Tennessee corporation with its principle place of business in Tennessee, therefore, is a citizen of the state of Tennessee.
4. The occurrence that gives rise to this cause of action occurred in Marion, Crittenden County, Arkansas.
5. There is diversity of citizenship for the parties to this action and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive interest and costs. Jurisdiction is invoked pursuant to 28 U.S.C. §1332.
6. This Court has jurisdiction over this cause and the parties hereto and venue is proper.

7. On January 25, 2011, an automobile collision occurred on State Highway 77 at the intersection of James Mill Road 3 miles north of Marion, Crittenden County, Arkansas. The collision involved a vehicle traveling southbound on State Highway 77 driven by Lisa Ball and a second vehicle traveling westbound on James Mill Road driven by the Defendant, John Cox and owned by separate Defendant, Flyway Express. The Plaintiff, Donna Fowler, was a passenger in the vehicle driven by Lisa Ball. The Defendant's vehicle attempted to cross State Highway 77 and failed to yield the right of way of oncoming traffic and pulled into the path of the vehicle driven by Lisa Ball.

8. The Defendants are subject to personal jurisdiction of this Court because the Plaintiff, Donna Fowler, sustained personal injury damages due to the negligence of John Cox, the Defendant, in Marion, Crittenden County, Arkansas.

9. The acts of negligence of John Cox described herein are imputed to the Defendant, Flyway Express, under the doctrine of *respondeat superior*.

10. The Defendant, Flyway Express, LLC, at the time of the occurrence described herein, was a motor carrier business engaged in interstate commerce, operating commercial vehicles and specializing in local cartage, distribution, and warehousing, and is subject to the rules and regulations of the United States Federal Highway Administration, Department of Transportation, using the roads and highways of the United States and specifically, the State of Arkansas.

11. The commercial van operated by John Cox is a commercial motor vehicle as defined by federal regulations and each vehicle is subject to the inspection, maintenance, insurance, and operational limitation requirements of the regulations promulgated by the Federal Highway Administration and Department of Transportation.

12. At the time of the accident referred to herein, John Cox was in the course and scope of his employment and/or agency relationship with Flyway Express, LLC.

13. As stated previously, the Defendant, John Cox, failed to yield to the right-of-way of oncoming traffic when he attempted to cross State Highway 77, causing the vehicle that contained Plaintiff, Donna Fowler, as a passenger to collide with the Flyway Express van. The Plaintiff Donna Fowler sustained numerous injuries as a result of this incident.

14. The incident and injuries out of which this cause arises occurred as a proximate result of the negligent conduct of John Cox, which is imputed to the Defendant, Flyway Express, LLC., which included, but is not limited to the following:

- a. The Defendant, John Cox, negligently failed to yield the right-of-way to oncoming traffic;
- b. The Defendant, John Cox, negligently failed to keep a proper lookout for other vehicles under the circumstances then and there existing;
- c. The Defendant, John Cox, failed to use ordinary care under the circumstances then and there existing;
- d. The Defendant, John Cox, negligently failed to keep his vehicle under proper control for the circumstances then and there existing.

15. As a proximate result of the Defendants' actions, as described above, the Plaintiff, Donna Fowler, sustained significant injuries to her body, including, but not limited to, a broken femur, an injury to her knees, pelvis, neck, back, and other injuries to her person.

16. As a proximate result of the negligence of the Defendants, the Plaintiff, Donna

Fowler, has undergone medical treatment in the past and will require medical treatment in the future; has incurred significant medical expenses in the past and will incur medical expenses in the future; has lost earnings in the past and will have lost earning capacity in the future; has suffered significant and severe pain, suffering, discomfort, and mental anguish in the past and will continue to suffer significant and severe pain, suffering, discomfort, and mental anguish in the future; and has lasting visible scars, disfigurement, and visible results of the injuries in that her injuries are permanent in nature.

17. The Plaintiff, Donna Fowler, as a direct result of the personal injuries she sustained described herein, should recover judgment from and against the Defendants, John Cox and Flyway Express, LLC, in an amount that exceeds the minimum monetary figure for federal court diversity jurisdiction plus her costs, pre-judgment interest, and all other proper relief to which she may be entitled.

18. The Plaintiff, Donna Fowler, was guilty of no comparative fault in causing her own injuries or damages.

19. The Plaintiff, Donna Fowler, specifically reserves the right to amend and plead further in this cause of action.

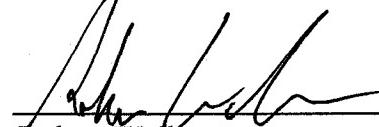
20. The Plaintiff, Donna Fowler, demands a trial jury in this cause of action.

WHEREFORE, the Plaintiff, Donna Fowler, prays that she have and recover jointly and severally from and against the Defendants, John Cox and Flyway Express, LLC, in an amount

that exceeds the minimum monetary figure for federal court diversity jurisdiction, plus her costs, pre-judgment interest, and all other proper relief to which she may be entitled.

Respectfully submitted,

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